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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71925; File No. SR-NASDAQ-2014-031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Incentive Program under Rule 7014, and the Schedule of Fees and Rebates under Rule 7018

April 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 2, 2014 The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to make changes to the Qualified Market Maker (“QMM”) Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. The changes will be implemented effective April 2, 2014.

The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to the QMM Incentive Program under Rule 7014 and to the schedule of fees and credits applicable to execution and routing of orders under Rule 7018, which are described in detail below.

QMM Incentive Program

NASDAQ is adding a new QMM eligibility requirement to the QMM Incentive Program under Rule 7014(d). A QMM is a member that makes a significant contribution to market quality by providing liquidity at the National Best Bid or Offer ("NBBO") in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a "QMM MPID"), as described under Rule 7014(e). Currently, a member may be designated as a QMM with respect to one or more of its MPIDs if the member is not assessed any "Excess Order Fee" under Rule 7018 during the month, and through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month.³ NASDAQ is proposing to now require a member to

³ Rule 7014(d).

also execute at least 0.30% of Consolidated Volume⁴ in an MPID in a month to qualify as a QMM, in addition to the existing QMM eligibility requirements under Rule 7014(d). Adding the 0.30% Consolidated Volume requirement furthers the goals of the program to promote price discovery and market quality by requiring the member to not only add to the quality of the markets in the price of its orders relative to the NBBO, but also to add a certain level of liquidity as well. A liquidity provider that executes substantive volume demonstrates its willingness to stand ready to buy or sell securities (i.e., to provide liquidity) by consummating transactions. The requirement outlined above is intended to ensure that QMMs remain *bona fide* liquidity providers, in addition to participants that actively quote at the NBBO.

Amended Fees for Execution and Routing of Securities Listed on NASDAQ (Tape C)

NASDAQ is proposing to reduce the credits provided to members that enter orders that provide non-displayed liquidity (other than Supplemental Orders) in NASDAQ-listed securities. Currently, NASDAQ provides a credit of \$0.0017 per share executed for midpoint orders if the member provides an average daily volume of 5 million or more shares through midpoint orders during the month, and a credit of \$0.0014 per share executed for midpoint orders if the member provides an average daily volume of less than 5 million shares through midpoint orders during the month. For other non-displayed orders, NASDAQ provides a credit of \$0.0010 per share executed if the member provides an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month, and a credit of \$0.0005

⁴ Consolidated Volume is defined as: the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. See Rule 7014(h)(5).

per share executed for other non-displayed orders. NASDAQ is proposing to reduce the credit to a member that provides an average daily volume of 1 million or more shares per day through midpoint orders or other non-displayed orders during the month from \$0.0010 per share executed to \$0.0005 per share executed. NASDAQ is also proposing to eliminate the \$0.0005 per share executed credit currently provided for other non-displayed orders and to provide no credit or fee for such orders. NASDAQ recognizes the special role that it plays as the listing market for securities listed on the NASDAQ stock market and seeks to encourage displayed quotation as much as possible for these securities. By reducing the financial incentive to provide non-displayed liquidity, NASDAQ believes it may increase the incentive to provide displayed liquidity, thereby increasing the pool of available liquidity. This has various beneficial effects, not least of which is improved price stability.

Fees for Execution in the Opening Cross

NASDAQ is proposing to add a new eligibility requirement to the fee cap on Opening Cross executions under Rule 7018(e). Currently, members that participate in the Opening Cross are assessed fees for their executions in the cross up to a maximum of \$20,000. The fee cap is designed to balance the need to assess fees for executions, yet also promote liquidity in the Opening Cross. NASDAQ is proposing to require that, to be eligible for the \$20,000 fee cap, a member must add at least one million shares of liquidity to the market, on average, per month. NASDAQ believes that the primary impact of this change will be to encourage firms that currently have a relatively large presence in the opening cross, but a disproportionately small presence during the continuous market, to increase their participation in the continuous market in order to continue to receive the benefit afforded by the cap. The improvement in available liquidity will, in turn, benefit all market participants.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed new eligibility requirement under the QMM Incentive Program is reasonable because it furthers the goal of the program, namely, to promote price discovery and market quality by adding a requirement that a member provide a certain level of Consolidated Volume through its MPIDs. The new Consolidated Volume requirement promotes market liquidity, which NASDAQ believes is an appropriate application of the program and the favorable pricing it provides to liquidity providers that qualify for the program. The proposed new eligibility requirement is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing applies equally to all NASDAQ members that are QMMs. Moreover, the favorable pricing of the incentive program is designed to encourage meaningful improvement to the market by ensuring liquidity providers are active and providing order activity that promotes price discovery and market stability. As a consequence, although some members may no longer qualify for the program due to the new requirement, NASDAQ believes that the new requirement is not unfairly discriminatory because such liquidity providers may elect to direct increased order flow to NASDAQ to meet the Consolidated Volume requirement.

The proposed reduction in the credits to members that enter orders that provide non-

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4) and (5).

displayed liquidity (other than Supplemental Orders) in NASDAQ-listed securities is reasonable because NASDAQ is merely reducing the credit provided for such executions, and in the case of non-displayed liquidity that does not otherwise qualify for the other credits of the rule, is providing no credit. NASDAQ notes that the credits provided by the rule are given in lieu of assessing normal fees, and accordingly provide incentive to market participants to enter such orders. The proposed change balances the Exchange's desire to provide certain incentives to market participants with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them. The proposed changes to the credits provided to members that enter orders that provide non-displayed liquidity (other than Supplemental Orders) in NASDAQ-listed securities is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing, which is the same for all NASDAQ participants, applies solely to members that opt to enter such non-displayed orders in NASDAQ-listed securities. Moreover, reducing the credits provided for such orders, yet providing greater incentives for identical orders in non-NASDAQ listed securities is not unfairly discriminatory because it is consistent with need to balance the credits provided by the Exchange with the order activity of the market.

The proposed new eligibility requirement for the \$20,000 Opening Cross fee cap is reasonable because it requires participants in the Opening Cross to provide a certain level of liquidity to the market, thus providing incentive to such participants to improve the market throughout the trading day in order to gain the benefit of the fee cap. As such, the proposed change is consistent with NASDAQ's ongoing efforts to use pricing incentives to attract orders that NASDAQ believes will improve market quality. The proposed new eligibility requirement for the \$20,000 Opening Cross fee cap is consistent with an equitable allocation of fees and is

not unfairly discriminatory because the fee cap is available to all market participants that participate in the Opening Cross and ties the benefit of the fee cap to market activity that benefits all market participants.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges and credits for participation on NASDAQ reflect changes in the cost of such participation to NASDAQ, and its desire to attract order flow that improves the market for all participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.⁷ The proposed changes to fees are reflective of NASDAQ's efforts to use reduced fees and credits to improve market quality and attract order flow. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to

⁷ 15 U.S.C. 78f(b)(8).

exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the eligibility requirement of the QMM program may limit the benefits of the program in NASDAQ-listed securities to the extent market makers no longer qualify, the incentive program remains in place and with a qualification requirement that is reasonable and which promotes improvement of market quality. Similarly, the changes to the credits provided for certain non-displayed orders in NASDAQ-listed securities and the eligibility for the Opening Cross fee cap do not impose a burden on competition because the benefit provided in the form of reduced fees are tied to reasonable requirements that are designed to improve market quality. Moreover, reducing the credit provided for certain non-displayed orders in NASDAQ-listed securities is consistent with the Exchange's need to balance the costs of such pricing with the benefit provided to the market. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁸

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-031 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-031. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2014-031, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Jill M. Peterson,
Assistant Secretary.

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⁹ 17 CFR 200.30-3(a)(12).